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Home Depot U.S.A., Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA AT ANCHORAGE

DAVID HAMMOND,

Plaintiff,

v.

THE HOME DEPOT #1304,

Defendant.

)  
)  
) **DEFENDANT'S NOTICE OF**  
) **REMOVAL**

) **DEMAND FOR JURY**  
)  
)  
)

Case No. 3:19-cv-\_\_\_\_\_

TO: United States District Court  
For the District of Alaska

AND TO: Robert J. Jurasek  
Pentlarge Law Group, LLC  
1400 West Benson Blvd., Suite 550  
Anchorage, AK 99503

**Please take note** that Defendant The Home Depot #1304 (hereinafter "Home Depot")  
hereby removes to this Court the State action described below in accordance with 28 U.S.C.  
§§ 1332, 1441, and 1446.

## **I. STATE COURT ACTION**

1. The State Court action to be removed is *Hammond v. The Home Depot #1304*, in the Superior Court for the State of Alaska at Palmer, Cause No. 3PA-18-2805 CI. (Plaintiffs' Complaint – **Exhibit A.**)

## **II. TIME FOR REMOVAL**

2. Plaintiff filed his action in the Superior Court for the State of Alaska at Palmer on December 20, 2018. The Complaint was served on Defendant on January 14, 2019. Defendant therefore has until February 14, 2019, or 30 days after service of Plaintiff's Complaint, to move for removal to this Federal District Court. 28 U.S.C. § 1446(b).

## **III. BASIS FOR REMOVAL**

3. A party may seek removal of a State Court action where the amount in controversy exceeds \$75,000 and the action is between citizens of different states. 28 U.S.C. § 1332(a)(1).

### **A. Amount in Controversy**

4. Where it is not factually evident from the complaint that the amount in controversy exceeds \$75,000, the moving party is to show, by a preponderance of the evidence, that the amount in controversy meets the jurisdictional requirement. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9<sup>th</sup> Cir.2003).

5. The preponderance of the evidence standard was recently re-affirmed in the Federal Courts Jurisdiction and Venue Clarification Act of 2011, Pub. L. No. 112-63, 125

Stat. 758. According to the House Report accompanying the bill, “circuits have adopted differing standards governing the burden of showing that the amount in controversy is satisfied. The ‘sum claimed’ and ‘legal certainty’ standards that govern the amount in controversy requirement when a plaintiff originally files in Federal court have not translated well to removal, where the plaintiff often may not have been permitted to assert in state court a sum claimed or, if asserted, may not be bound by it.” H.R. Rep. No. 112-10, at 15 (2011). Accordingly, “the defendants do not need to prove to a legal certainty that the amount in controversy requirement has been met. Rather, defendants may simply allege or assert that the jurisdictional threshold has been met.” *Id.* at 16.

6. It is “facially apparent” from the nature of the claims alleged, and more likely than not from the types of damages sought, that the amount in controversy exceeds \$75,000, exclusive of interests and costs.

7. The face of the Complaint establishes that Plaintiffs seek damages in excess of \$75,000 as Plaintiff’s complaint alleges that the Defendant is liable for an amount greater than \$100,000. Ex. A, ¶ 7. Thus, the amount in controversy requirement is met.

8. Therefore, it is apparent from the face of Plaintiff’s Complaint that Plaintiff’s alleged damages exceed \$75,000.

**B. Diversity of Citizenship**

9. This is a personal injury action arising from damages allegedly sustained by Plaintiff David Hammond at the Home Depot store at 1255 E. Palmer/Wasilla Highway, Wasilla, Alaska. Ex. A, ¶ 2.

DEFENDANT’S NOTICE OF REMOVAL AND DEMAND FOR JURY

*David Hammond v. The Home Depot #1304.* Case No. 3:19-cv-\_\_\_\_\_

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10. Plaintiff's Complaint states that Plaintiff is a resident of Alaska and is therefore an Alaskan citizen. Ex. A, ¶ 1.

11. Defendant Home Depot, USA, Inc., is a corporation incorporated in the State of Delaware with its principal place of business in the State of Georgia. For the purpose of removal based on diversity jurisdiction, Defendant is a citizen of the states of Delaware and Georgia. 28 U.S.C. § 1332(C)(1); *Hertz Corp v. Friend*, 559 US 77 (2010).

#### IV. REQUIRED DOCUMENTS

12. Defendant will promptly file a copy of this Notice with the Clerk of the Alaska Superior Court at Anchorage and will give written notice to all adverse parties. 28 U.S.C. § 1446(d).

13. In accordance with 28 U.S.C. § 1446, attached are the following documents which have been served on Defendant: Exhibit A – the Complaint; Exhibit B – Summons; Exhibit C – Notice of Removal from State Court to United States District Court (without exhibits).

#### V. JURY DEMAND

14. As permitted by Fed. R. Civ. P. 38, Fed. R. Civ. P. 81(c)(3), Defendant demands a Jury of twelve (12).

WHEREFORE, Defendant requests that the above action, *Hammond v. The Home Depot #1304*, in the Superior Court for the State of Alaska at Palmer, Cause No. 3PA-18-2805 CI, be removed to the United States District Court of Alaska at Anchorage.

DATED this 29th day of January 2019, at Anchorage, Alaska.

RICHMOND & QUINN  
*Attorneys for Defendant*  
*Home Depot U.S.A., Inc.*

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of  
the foregoing was served via mail this 29<sup>th</sup> day of  
January 2019, on:

Robert J. Jurasek  
Pentlarge Law Group, LLC  
1400 West Benson Blvd., Suite 550  
Anchorage, AK 99503



RICHMOND & QUINN  
I:\2219\021\NOTICE OF REMOVAL (USDC).docx

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DEFENDANT'S NOTICE OF REMOVAL AND DEMAND FOR JURY

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